2011 PA H 761 , Enacted

Pennsylvania

SUMMARY: Amends the Tax Reform Code of 1971; relates to sales tax exemptions, personal income tax, corporate income tax, insurance premiums tax, realty transfer tax, cigarette tax, research and development tax credit, film production tax credit, educational improvement tax credit, resource manufacturing tax credit, historic structures tax credit, community-based services tax credit, neighborhood assistance tax credit, malt beverage tax and inheritance tax.~SAME AS:

State Net Legislative History and Analysis

Changes in Bill text reflected as:

~~**Text Deleted**~~

Text Added

~~**Text Vetoed**~~

Current Legislative Status

02/17/2011 FILED.

02/23/2011 INTRODUCED.

02/23/2011 To HOUSE Committee on FINANCE.

10/19/2011 From HOUSE Committee on FINANCE. Reported as amended.

10/19/2011 In HOUSE. Read first time.

10/19/2011 In HOUSE. Laid on table.

12/06/2011 In HOUSE. Removed from table.

12/07/2011 In HOUSE. Read second time.

12/07/2011 Rereferred to HOUSE Committee on APPROPRIATIONS.

12/12/2011 From HOUSE Committee on APPROPRIATIONS.

12/12/2011 In HOUSE. Read third time. Passed HOUSE. *****To SENATE.

12/14/2011 To SENATE Committee on FINANCE.

04/03/2012 From SENATE Committee on FINANCE. Reported as amended.

04/03/2012 In SENATE. Read first time.

05/01/2012 To SENATE Committee on APPROPRIATIONS.

05/21/2012 From SENATE Committee on APPROPRIATIONS. Reported as amended.

05/23/2012 In SENATE. Read second time.

06/18/2012 To SENATE Committee on APPROPRIATIONS.

06/29/2012 From SENATE Committee on APPROPRIATIONS. Reported as amended.

06/29/2012 In SENATE. Read third time. Passed SENATE. *****To HOUSE for concurrence.

06/29/2012 Rereferred to HOUSE Committee on RULES for concurrence.

06/29/2012 From HOUSE Committee on RULES.

06/30/2012 Rereferred to HOUSE Committee on RULES for concurrence.

06/30/2012 From HOUSE Committee on RULES. Reported as amended.

06/30/2012 HOUSE concurred in SENATE amendments with further amendments. *****To SENATE for concurrence.

06/30/2012 To SENATE Committee on RULES AND EXECUTIVE NOMINATIONS for concurrence.

06/30/2012 From SENATE Committee on RULES AND EXECUTIVE NOMINATIONS.

06/30/2012 SENATE concurred in HOUSE amendments.

07/02/2012 *****To GOVERNOR.

07/02/2012 Signed by GOVERNOR.

07/02/2012 Act No. 2012-85

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session: Pennsylvania 195th General Assembly -- 2011-12 Regular Session

cite: 2011 PA H 761

Enacted

July 2, 2012

Cutler

Session of 2011

Act No. 2012-85

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL No. 761

AN ACT

SECTIONS NOT PERTAINING TO THE FILM INCENTIVE HAVE BEEN OMITTED.

Section 15. The definition of "qualified tax liability" in section 1702-D of the act, added July 25, 2007 (P.L.373, No.55), is amended and the section is amended by adding definitions to read:

Section 1702-D. Definitions.

The following words and phrases when used in this article shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Minimum stage filming requirements." Include:

(1) Taxpayers with a Pennsylvania production expense of less than $30,000,000 per production must:

(i) build at least one set at a qualified production facility;

(ii) shoot for a minimum of ten days at a qualified production facility; and

(iii) spend or incur a minimum of $1,500,000 in direct expenditures relating to the use or rental of tangible property or for performance of services provided by a qualified production facility.

(2) Taxpayers with a Pennsylvania production expense of at least $30,000,000 per production must:

(i) build at least two sets at a qualified production facility;

(ii) shoot for a minimum of 15 days at a qualified production facility; and

(iii) spend or incur a minimum of $5,000,000 in direct expenditures relating to the use or rental of tangible property at or for performance of services provided by a qualified production facility.

* * *

"Qualified production facility." A film production facility located within this Commonwealth that contains at least one sound stage with a column-free, unobstructed floor space and meets either of the following criteria:

(1) Has had a minimum of $10,000,000 invested in the film production facility in land or a structure purchased or ground-up, purpose-built new construction or renovation of existing improvement.

(2) Meets at least three of the following criteria:

(i) A sound stage having an industry standard noise criteria rating of 25 or better.

(ii) A permanent grid with a minimum point load capacity of no less than 1,000 pounds at a minimum of 25 points.

(iii) Built-in power supply available at a minimum of 4,000 amps per sound stage without the need for supplemental generators.

(iv) A height from sound stage floor to permanent grid of a minimum of 20 feet.

(v) A sound stage with a sliding or roll-up access door with a minimum height of 14 feet.

(vi) A built-in HVAC capacity during shoot days with a minimum of 50 tons of cooling capacity available per sound stage.

(vii) Perimeter security that includes a 24-hour, seven-days-a-week security presence and use of access control identification badges.

(viii) On-site lighting and grip department with an available inventory stored at the film production facility with a minimum cost of investment of $500,000.

(ix) A sound stage with contiguous production offices with a minimum of 5,000 square feet per sound stage.

"Qualified tax liability." The liability for taxes imposed under Article III, IV ~~**or**~~ ***,*** VI ***, VII or IX*** . The term shall not include any tax withheld by an employer from an employee under Article III.

* * *

Section 15.1. Section 1703-D(b) of the act, added July 25, 2007 (P.L.373, No.55), is amended to read:

Section 1703-D. Credit for qualified film production expenses.

* * *

(b) Review and approval.-- ~~**The department shall review and approve or disapprove the applications in the order in which they are received.**~~ ***The department shall establish application periods not to exceed 90 days each. All applications received during the application period shall be reviewed and evaluated by the department based on the following criteria:***

(1) The anticipated number of production days in a qualified production facility.

(2) The anticipated number of Pennsylvania employees.

(3) The number of preproduction days through postproduction days in Pennsylvania.

(4) The anticipated number of days spent in Pennsylvania hotels.

(5) The Pennsylvania production expenses in comparison to the production budget.

(6) The use of studio resources.

Upon determining the taxpayer has incurred or will incur qualified film production expenses, the department may approve the taxpayer for a tax credit. ***Applications not approved may be reviewed and considered in subsequent application periods. The department may approve a taxpayer for a tax credit based on its evaluation of the criteria under this subsection.***

* * *

Section 16. Sections 1705-D and 1707-D of the act, added July 25, 2007 (P.L.373, No.55), are amended to read:

Section 1705-D. Carryover, carryback and assignment of credit.

(a) General rule.--If the taxpayer cannot use the entire amount of the tax credit for the taxable year in which the tax credit is first approved, then the excess may be carried over to succeeding taxable years and used as a credit against the qualified tax liability of the taxpayer for those taxable years. Each time the tax credit is carried over to a succeeding taxable year, it shall be reduced by the amount that was used as a credit during the immediately preceding taxable year. The tax credit provided by this article may be carried over and applied to succeeding taxable years for no more than three taxable years following the first taxable year for which the taxpayer was entitled to claim the credit.

(b) Application.--A tax credit approved by the department in a taxable year first shall be applied against the taxpayer's qualified tax liability for the current taxable year as of the date on which the credit was approved before the tax credit can be applied against any tax liability under subsection (a).

(c) No carryback or refund.--A taxpayer is not entitled to carry back or obtain a refund of all or any portion of an unused tax credit granted to the taxpayer under this article.

(d) (Reserved).

(e) Sale or assignment.--The following shall apply:

(1) A taxpayer, upon application to and approval by the department, may sell or assign, in whole or in part, a tax credit granted to the taxpayer under this article.

(2) The department and the Department of Revenue shall jointly promulgate regulations for the approval of applications under this subsection.

(3) Before an application is approved, the Department of Revenue must make a finding that the applicant has filed all required State tax reports and returns for all applicable taxable years and paid any balance of State tax due as determined at settlement, assessment or determination by the Department of Revenue.

(4) Notwithstanding any other provision of law, the Department of Revenue shall settle, assess or determine the tax of an applicant under this subsection within 90 days of the filing of all required final returns or reports in accordance with section 806.1(a)(5) of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code.

(f) Purchasers and assignees.-- ***Except as set forth in subsection (g), the following apply:***

(1) The purchaser or assignee of all or a portion of a tax credit under subsection (e) shall immediately claim the credit in the taxable year in which the purchase or assignment is made.

(2) The amount of the tax credit that a purchaser or assignee may use against any one qualified tax liability may not exceed 50% of such qualified tax liability for the taxable year.

(3) The purchaser or assignee may not carry forward, carry back or obtain a refund of or sell or assign the tax credit.

(4) The purchaser or assignee shall notify the Department of Revenue of the seller or assignor of the tax credit in compliance with procedures specified by the Department of Revenue.

(g) Limited carry forward of tax credits by a purchaser or assignee.--A purchaser or assignee may carry forward all or any unused portion of a tax credit purchased or assigned in calendar year 2010 against qualified tax liabilities incurred in taxable years 2011 and 2012.

Section 1707-D. Limitations.

(a) Cap.--In no case shall the aggregate amount of tax credits awarded in any fiscal year under this article exceed ~~**$75,000,000.**~~ ***$60,000,000. The department may, in its discretion, award in one fiscal year up to:***

(1) Thirty percent of the dollar amount of film production tax credits available to be awarded in the next succeeding fiscal year.

(2) Twenty percent of the dollar amount of film production tax credits available to be awarded in the second successive fiscal year.

(3) Ten percent of the dollar amount of film production tax credits available to be awarded in the third successive fiscal year.

(a.1) Advance award of credits.--The advance award of film tax credits under subsection (a) shall:

(1) count against the total dollar amount of credits that the department may award in that next succeeding fiscal year; and

(2) reduce the dollar amount of credits that the department may award in that next succeeding fiscal year.

The individual limitations on the awarding of film production tax credits apply to an advance award of film production tax credits under subsection (a), and to a combination of film production tax credits awarded against the current fiscal year cap and against the next succeeding fiscal year's cap.

(b) Individual limitations.--The following shall apply:

(1) ~~**The**~~ ***Except as set forth in paragraph (1.1), the*** aggregate amount of film production tax credits awarded by the department under section 1703-D(d) to a taxpayer for a film may not exceed 25% of the qualified film production expenses to be incurred.

(1.1) In addition to the tax credit under paragraph (1), a taxpayer is eligible for a credit in the amount of 5% of the qualified film production expenses incurred by the taxpayer if the taxpayer:

(i) films a feature film, television film or television series, which is intended as programming for a national audience; and

(ii) films in a qualified production facility which meets the minimum stage filming requirements.

(2) A taxpayer that has received a grant under 12 Pa.C.S. Section 4106 (relating to approval) shall not be eligible for a film production tax credit under this act for the same film.

(c) Qualified production facility.--To be considered a qualified production facility under subsection (b)(1.1), the owner of a facility shall provide evidence to the department to verify the development or facility specifications and capital

improvement costs incurred for the facility so that the threshold amounts set in the definition of “qualified production facility” under section 1702-D are satisfied, and upon verification, the facility shall be registered by the department officially as a qualified production facility.

(d) Waiver.--The department may make a determination that the financial benefit to this Commonwealth resulting from the direct investment in, or payments made to, Pennsylvania facilities outweighs the benefit of maintaining the 60% requirement contained in the definition of “qualified film production expense.” If such determination is made, the department may waive the requirement that 60% of a film's total production expenses be comprised of Pennsylvania production expenses for a feature film, television film or television series that is intended as programming for a national audience and is filmed in a qualified production facility if the taxpayer who has Pennsylvania production expenses of at least $30,000,000 per production meets the minimum stage filming requirements.

SECTIONS NOT PERTAINING TO THE FILM INCENTIVE HAVE BEEN OMITTED.